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Board of Supervisors**

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Chief Deputy Director

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*To ensure access to high-quality,  
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County residents through direct  
services at DHS facilities and  
through collaboration with  
community and university  
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May 17, 2011

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**REQUEST FOR DELEGATED AUTHORITY TO EXECUTE AGREEMENTS  
FOR SUPPLEMENTAL MANAGED CARE PAYMENTS  
(ALL SUPERVISORIAL DISTRICTS)  
(3 VOTES)**

**SUBJECT**

Request approval and delegation of authority to the Department of Health Services (DHS) to execute agreements with the California Department of Health Care Services (DHCS), to make inter-governmental transfers to fund supplemental Medi-Cal managed care rate increases, and to execute contract amendments with the Local Initiative Health Authority for Los Angeles County (L.A. Care) and Health Net of California, Inc. (Health Net) to allow the Community Health Plan (CHP) and DHS providers to receive the supplemental Medi-Cal payments so funded.

**IT IS RECOMMENDED THAT YOUR BOARD:**


Delegate authority to the Director of Health Services, or his designee, to prepare and execute, on behalf of the County of Los Angeles, the following four agreements for the federal fiscal year (FFY) period of October 1, 2009 through September 30, 2010, subject to review and approval by County Counsel and the Chief Executive Office, and written notification to your Board when the final agreements are executed:

1. An agreement with DHCS to authorize intergovernmental transfers (IGTs) of approximately \$27,186,000 to fund the Special Medi-Cal Managed Care Capitation Rate Increases (SMCRIs) for L.A. Care.

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

#21 MAY 17, 2011

  
SACHI A. HAMAI  
EXECUTIVE OFFICER

2. An agreement with DHCS to authorize IGTs of approximately \$13,148,000 to fund SMCRIs for Heath Net.
3. An amendment to the existing service agreement with L.A. Care which will authorize it to provide to CHP Local Medi-Cal Managed Care Supplemental Payments (LMSPs) of approximately \$75,000,000. The LMSPs are based on the SMCRIs that L.A. Care receives from DHCS.
4. An amendment to the existing service agreement with Health Net which will authorize it to provide to DHS LMSPs of approximately \$37,500,000. These LMSPs are based on the SMCRIs that Health Net receives from DHCS.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The recommendations will allow the Director to enter into the necessary agreements with DHCS in formats similar to Exhibits I and II; enter into an amendment to the agreements with L.A. Care, similar to Exhibit III, which authorizes L.A. Care to forward LMSPs of approximately \$75,000,000 to CHP; and enter into an amendment to the agreement with Health Net, similar to Exhibit IV, which authorizes Health Net to forward LMSPs to DHS providers of approximately \$37,500,000. Health Net will be permitted to retain an administrative fee of \$100,000, and both L.A. Care and Health Net will be permitted to retain sufficient amounts to pay the State taxes assessed on the SMCRIs.

Several years ago, in an effort to increase funding for health care services, the State and federal governments approved a County-developed proposal to use IGTs to draw down federal revenues to fund higher capitation payments to CHP and DHS facilities under Medi-Cal managed care. They are again willing to allow higher Medi-Cal capitation rates for FFY 2009-10 to L.A. Care and Health Net which are funded by County IGTs. The two health plans would then pass on most of those additional payments, which include both local and federal matching funds to the County providers or the CHP as LMSPs.

To implement this program, two types of agreements are required. The first type of agreement is with DHCS and allows the County to make IGTs to fund the Medi-Cal managed care rate increases for services provided to L.A. Care and Health Net enrollees for the period of October 1, 2009 through September 30, 2010, which is the most recently completed managed care rate year. To the extent IGT funds are not used by DHCS to make supplemental payments to L.A. Care and Health Net, the money will be returned to the County.

The second type of agreements are with L.A. Care and Health Net and are necessary to set the terms and conditions under which those entities pass on the increased payments to CHP and the DHS providers.

The Centers for Medicare and Medicaid Services (CMS) must approve all Medi-Cal managed care rate increases and review all relevant documentation. Although CMS has reviewed the general format of the draft agreements attached to this letter, it has not given final approval. Accordingly, additional changes may be required by CMS. In the unlikely event that CMS requires material changes, we shall return to your Board for a new delegation of authority. Otherwise, we shall notify your Board when the contracts are executed.

### **Implementation of Strategic Plan Goals**

The recommended actions support Goal 4, Health and Mental Health of the County Strategic Plan, by maximizing federal revenue streams for patient care at County health facilities.

### **FISCAL IMPACT/FINANCING**

Approval of these actions will allow DHS to make IGT payments to DHCS for L.A. Care of approximately \$27,186,000 and for Health Net of approximately \$13,148,000 for FFY 2009-10 and receive aggregate payments from L.A. Care and Health Net of approximately \$75,000,000 and \$37,500,000, respectively. The final payments for FFY 2009-10 services under these agreements will depend on the actual number of capitated lives enrolled in each health plan. The payments received must be used by the DHS facilities to which they are allocated to pay for health care services; that is, no part of such payments may be distributed to the County's general fund or used by other County entities. Funding for the IGTs and the associated revenues are included in the DHS' Fiscal Year 2010-11 Final Budget.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

On August 19, 2008 and November 18, 2008, your Board authorized DHS to execute similar agreements with DHCS to make IGTs (\$74,670,000) and with L.A. Care to receive LMSPs (\$149,340,000). These agreements covered the periods of October 1, 2006 through September 30, 2007 and October 1, 2007 through September 30, 2008.

This program was extended to FFY 2008-09 and to plans other than L.A. Care. Consequently, on December 22, 2009, your Board authorized DHS to execute agreements with DHCS to make IGTs to fund SMCRIs for L.A. Care and Health Net. This allowed DHS to receive LMSPs from L.A. Care of \$74,794,553 and from Health Net of \$37,421,662.

The State worked with CMS to extend the program to FFY 2009-10. Once again, agreements of both types will be necessary. The agreement with the State will require DHS to certify that the transferred funds qualify for federal financial participation.

The County does not receive managed care payments directly from the State; rather, the DHCS contracts with L.A. Care and Health Net, which then subcontracts for services with various provider networks, including CHP and DHS providers. Accordingly, DHS is negotiating amendments to these subcontractor agreements to provide that DHCS will submit supplemental capitated rate increases to L.A. Care and Health Net with the expectation that the full amount of such supplemental payments, except for Health Net's administrative fee and the amounts necessary to pay the tax imposed on the SMCRIs, will be passed through to DHS.

DHS understands that DHCS will not make supplemental payments to L.A. Care and Health Net unless agreements between DHS and the two plans are in place. To expedite receipt of these supplemental funds, DHS is requesting delegation of authority from your Board to execute the DHCS, L.A. Care and Health Net agreements as soon as they are approved by CMS and the State.

The agreements contain an indemnification clause authorizing DHS to hold L.A. Care and/or Health Net harmless for any losses they incur after the execution of these agreements and as a result of the receipt of SMCRIs or payments of LMSPs.

**CONTRACTING PROCESS**

Advertising on the County's Online Website is not applicable.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on current services as a result of this authorization. However, approval of this action will allow DHS to increase federal revenue sources and meet revenue projections included in the DHS Fiscal Outlook.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Katz". The signature is fluid and cursive, with the first name "Mitchell" written in a larger, more prominent script than the last name "Katz".

Mitchell H. Katz, M.D.  
Director

MHK:lwn

Enclosures

c: Chief Executive Office  
County Counsel  
Executive Officer, Board of Supervisors  
Auditor-Controller

**INTERGOVERNMENTAL AGREEMENT REGARDING  
TRANSFER OF PUBLIC FUNDS**

This Agreement is entered into between the CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES (DHCS) and the COUNTY OF LOS ANGELES, CALIFORNIA, (the County) with respect to the matters set forth below.

**RECITALS**

A. This Agreement is made pursuant to the authority of Division 9, Part 3, Chapter 7, Article 5 of the Welfare & Institutions Code, section 14164.

B. The Local Initiative Health Authority of Los Angeles County dba L.A. Care Health Plan ("L.A. Care") is a local government agency formed pursuant to Welfare and Institutions Code sections 14087.38 (b) and 14087.9605. L.A. Care is a party to a Medi-Cal managed care contract with DHCS, entered into pursuant to Welfare and Institutions Code section 14087.3, under which L.A. Care arranges and pays for the provision of covered Medi-Cal health care services to eligible Medi-Cal members residing in the County.

THEREFORE, the parties agree as follows:

**AGREEMENT**

1. Transfer of Public Funds

1.1 The County shall transfer funds to DHCS pursuant to section 14164 of the Welfare and Institutions Code, up to a maximum total amount of Twenty Seven Million One Hundred and Eighty Six Thousand Three Hundred and Nineteen Dollars (\$27,186,319), to be used solely as a portion of the nonfederal share of actuarially sound Medi-Cal managed care capitation rate increases for L.A. Care for the period October 1, 2009, through September 30, 2010, as described in section 2.2 below. The funds shall be transferred in accordance with a mutually agreed upon schedule between the County and DHCS, in the amounts specified therein.

1.2 The County shall certify that the funds transferred qualify for federal financial participation pursuant to 42 C.F.R. part 433 subpart B, and are not derived from impermissible sources such as recycled Medicaid payments, federal money excluded from use as State match, impermissible taxes, and non-bona fide provider-related donations.

2. Acceptance and Use of Transferred Funds by DHCS

2.1 DHCS shall exercise its authority under section 14164 of the Welfare and Institutions Code to accept funds transferred by the County pursuant to this Agreement as intergovernmental transfers, to use for the purpose set forth in section 2.2 below.

2.2 The funds transferred by the County pursuant to this Agreement shall be used to fund a portion of the nonfederal share of increases in Medi-Cal managed care actuarially sound capitation rates and shall be paid (together with the related federal financial participation) by DHCS to L.A. Care as part of L.A. Care's capitation rates for the period October 1, 2009 through September 30, 2010. The rate increases paid under section 2.2 shall be used for payments related to Medi-Cal services rendered to Medi-Cal beneficiaries. The rate increases paid under this section 2.2 shall be in addition to (and shall not replace or supplant) all other amounts paid or payable by DHCS or other State agencies to L.A. Care including but not limited to: (a) any periodic, special or annual rate increases payable to L.A. Care by DHCS for Medi-Cal managed care services; (b) any rate increases that may result from the implementation of changes to L.A. Care's Medi-Cal service obligations; and/or (c) any and all other rate increases or amounts payable by DHCS or any other State agency to L.A. Care for any reason relating to Medi-Cal health care or other Medi-Cal services provided for or arranged by L.A. Care at any time.

2.3 DHCS shall seek federal financial participation for the rate increases specified in section 2.2 to the full extent permitted by federal law.

2.4 Both parties acknowledge the State DHCS will obtain any necessary approvals from the Centers for Medicare and Medicaid Services prior to the payment of any rate increase pursuant to section 2.2.

2.5 Both parties agree that none of these funds, either County or federal matching funds will be recycled back to the County general fund, the State, or any other intermediary organization.

2.6 Within One Hundred Twenty (120) calendar days of the execution of this Agreement, DHCS shall advise the County and L.A. Care of the amount of the Medi-Cal managed care capitation rate increases that DHCS paid to L.A. Care during the applicable rate year involving any funding under the terms of this Agreement.

2.7 If any portion of the funds transferred by the County pursuant to this Agreement is not expended for the specified rate increases under Section 2.2, DHCS shall return the unexpended funds to the County.

3. Amendments

3.1 No amendment or modification to this Agreement shall be binding on either party unless made in writing and executed by both parties.

3.2 The parties shall negotiate in good faith to amend this Agreement as necessary and appropriate to implement the requirements set forth in section 2 of this Agreement.

4. Notices. Any and all notices required, permitted or desired to be given hereunder by one party to the other shall be in writing and shall be delivered to the other party personally or by United States first class, certified or registered mail with postage prepaid, addressed to the other party at the address set forth below:

To the County:

Allan Wecker, Chief Financial Officer  
County of Los Angeles  
Department of Health Services  
313 North Figueroa Street, Room 907  
Los Angeles, California 90012

To DHCS:

Carrie Allison  
California Department of Health Care Services  
Medi-Cal Managed Care Division  
1501 Capitol Ave., Suite 71-4002  
MS 4415  
P.O. Box 997413  
Sacramento, CA 95899-7413

5. Other Provisions

5.1 This Agreement contains the entire Agreement between the parties with respect to the Medi-Cal rate increases for L.A. Care described in section 2.2 and supercedes any previous or contemporaneous oral or written proposals, statements, discussions, negotiations or other agreements between the County of Los Angeles and the California Department of Health Care Services. This Agreement is not, however, intended to be the sole agreement between the parties on matters relating to the funding and administration of the Medi-Cal program. One or more other agreements already exist between the parties regarding such other matters, and other agreements may be entered into in the future. This Agreement shall not modify the terms of any other agreement between the parties.

5.2 The non-enforcement or other waiver of any provision of this Agreement shall not be construed as a continuing waiver or as a waiver of any other provision of this Agreement.

5.3 Section 2 of this Agreement shall survive the expiration or termination of this Agreement.



5.4 Nothing in this Agreement is intended to confer any rights or remedies on any third party, including, without limitation, any provider(s) or groups of providers, or any right to medical services for any individual(s) or groups of individuals; accordingly, there shall be no third party beneficiary of this Agreement.

5.5 Time is of the essence in this Agreement.

5.6 Each party hereby represents that the person(s) executing this Agreement on its behalf is duly authorized to do so.

6. State Authority. Except as expressly provided herein, nothing in this Agreement shall be construed to limit, restrict, or modify the DHCS' powers, authorities, and duties under federal and state law and regulations.

7. Approval. This Agreement is of no force and effect until signed by the parties.

8. Term. This Agreement shall be effective as of October 1, 2009 and shall expire as of September 30, 2011, unless terminated earlier by mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date of the last signature below.

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mitchell H. Katz, M.D., Director  
Department of Health Services

THE STATE OF CALIFORNIA, DEPARTMENT OF HEALTH CARE SERVICES:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Tanya Homman, Chief, Medi-Cal Managed Care Division

**INTERGOVERNMENTAL AGREEMENT REGARDING  
TRANSFER OF PUBLIC FUNDS**

This Agreement is entered into between the CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES (DHCS) and the COUNTY OF LOS ANGELES, CALIFORNIA, (the County) with respect to the matters set forth below.

**RECITALS**

A. This Agreement is made pursuant to the authority of Division 9, Part 3, Chapter 7, Article 5 of the Welfare & Institutions Code, section 14164.

B. Health Net of California, Inc. (Health Net), a corporation licensed pursuant to Health and Safety Code sections 1349 et seq. Health Net is a party to a Medi-Cal managed care contract with DHCS, entered into pursuant to Welfare and Institutions Code section 14087.3, under which Health Net arranges and pays for the provision of covered Medi-Cal health care services to eligible Medi-Cal members residing in the County.

THEREFORE, the parties agree as follows:

**AGREEMENT**

1. Transfer of Public Funds

1.1 The County shall transfer funds to DHCS pursuant to section 14164 of the Welfare and Institutions Code, up to a maximum total amount of Thirteen Million, One Hundred and Forty-Eight Thousand, Four Hundred and Seventy- Six Dollars (\$13,148,476), to be used solely as a portion of the nonfederal share of actuarially sound Medi-Cal managed care capitation rate increases for Health Net for the period October 1, 2009, through September 30, 2010, as described in section 2.2 below. The funds shall be transferred in accordance with a mutually agreed upon schedule between the County and DHCS, in the amounts specified therein.

1.2 The County shall certify that the funds transferred qualify for federal financial participation pursuant to 42 C.F.R. part 433 subpart B, and are not derived from impermissible sources such as recycled Medicaid payments, federal money excluded from use as State match, impermissible taxes, and non-bona fide provider-related donations.

2. Acceptance and Use of Transferred Funds by DHCS

2.1 DHCS shall exercise its authority under section 14164 of the Welfare and Institutions Code to accept funds transferred by the County pursuant to this Agreement as intergovernmental transfers, to use for the purpose set forth in section 2.2 below.

2.2 The funds transferred by the County pursuant to this Agreement shall be used to fund a portion of the nonfederal share of increases in Medi-Cal managed care actuarially sound capitation rates and shall be paid (together with the related federal financial participation) by DHCS to Health Net as part of Health Net's capitation rates for the period October 1, 2009 through September 30, 2010. The rate increases paid under section 2.2 shall be used for payments related to Medi-Cal services rendered to Medi-Cal beneficiaries. The rate increases paid under this section 2.2 shall be in addition to (and shall not replace or supplant) all other amounts paid or payable by DHCS or other State agencies to Health Net including but not limited to: (a) any periodic, special or annual rate increases payable to Health Net by DHCS for Medi-Cal managed care services; (b) any rate increases that may result from the implementation of changes to Health Net's Medi-Cal service obligations; and/or (c) any and all other rate increases or amounts payable by DHCS or any other State agency to Health Net for any reason relating to Medi-Cal health care or other Medi-Cal services provided for or arranged by Health Net at any time.

2.3 DHCS shall seek federal financial participation for the rate increases specified in section 2.2 to the full extent permitted by federal law.

2.4 Both parties acknowledge the State DHCS will obtain any necessary approvals from the Centers for Medicare and Medicaid Services prior to the payment of any rate increase pursuant to section 2.2.

2.5 Both parties agree that none of these funds, either County or federal matching funds will be recycled back to the County general fund, the State, or any other intermediary organization.

2.6 Within One Hundred Twenty (120) calendar days of the execution of this Agreement, DHCS shall advise the County and Health Net of the amount of the Medi-Cal managed care capitation rate increases that DHCS paid to Health Net during the applicable rate year involving any funding under the terms of this Agreement.

2.7 If any portion of the funds transferred by the County pursuant to this Agreement is not expended for the specified rate increases under Section 2.2, DHCS shall return the unexpended funds to the County.

3. Amendments

3.1 No amendment or modification to this Agreement shall be binding on either party unless made in writing and executed by both parties.

3.2 The parties shall negotiate in good faith to amend this Agreement as necessary and appropriate to implement the requirements set forth in section 2 of this Agreement.

4. Notices. Any and all notices required, permitted or desired to be given hereunder by one party to the other shall be in writing and shall be delivered to the other party personally or by United States first class, certified or registered mail with postage prepaid, addressed to the other party at the address set forth below:

To the County:

Allan Wecker, Chief Financial Officer  
County of Los Angeles  
Department of Health Services

313 North Figueroa Street, Room 907  
Los Angeles, California 90012

To DHCS:

Carrie Allison  
California Department of Health Care Services  
Medi-Cal Managed Care Division  
1501 Capitol Ave., Suite 71-4002  
MS 4415  
P.O. Box 997413  
Sacramento, CA 95899-7413

5. Other Provisions

5.1 This Agreement contains the entire Agreement between the parties with respect to the Medi-Cal rate increases for Health Net described in section 2.2 and supercedes any previous or contemporaneous oral or written proposals, statements, discussions, negotiations or other agreements between the County of Los Angeles and the California Department of Health Care Services. This Agreement is not, however, intended to be the sole agreement between the parties on matters relating to the funding and administration of the Medi-Cal program. One or more other agreements already exist between the parties regarding such other matters, and other agreements may be entered into in the future. This Agreement shall not modify the terms of any other agreement between the parties.

5.2 The non-enforcement or other waiver of any provision of this Agreement shall not be construed as a continuing waiver or as a waiver of any other provision of this Agreement.

5.3 Section 2 of this Agreement shall survive the expiration or termination of this Agreement.

5.4 Nothing in this Agreement is intended to confer any rights or remedies on any third party, including, without limitation, any provider(s) or groups of providers, or any right to medical services for any individual(s) or groups of individuals; accordingly, there shall be no third party beneficiary of this Agreement.

5.5 Time is of the essence in this Agreement.

5.6 Each party hereby represents that the person(s) executing this Agreement on its behalf is duly authorized to do so.

6. State Authority. Except as expressly provided herein, nothing in this Agreement shall be construed to limit, restrict, or modify the DHCS' powers, authorities, and duties under federal and state law and regulations.

7. Approval. This Agreement is of no force and effect until signed by the parties.

8. Term. This Agreement shall be effective as of October 1, 2009, and shall expire as of September 30, 2011 unless terminated earlier by mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date of the last signature below.

THE COUNTY OF LOS ANGELES:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mitchell H. Katz, M.D.

Director, Department of Health Services

THE STATE OF CALIFORNIA, DEPARTMENT OF HEALTH CARE SERVICES:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Tanya Homman, Chief, Medi-Cal Managed Care Division

**Amendment No. X  
Services Agreement  
between  
Local Initiative Health Authority  
for Los Angeles County  
and  
Community Health Plan**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_ by and between the Local Initiative Health Authority for Los Angeles County, doing business as L.A. Care Health Plan, a local government agency, hereinafter referred to as "PLAN" and the County of Los Angeles ("County"), on behalf of the Community Health Plan, hereinafter referred to as "PROVIDER".

Recitals

WHEREAS, PLAN and PROVIDER have previously entered into an agreement effective January 1, 2010;

WHEREAS, section\_10.05 of such Agreement provides for amending such Agreement;

WHEREAS, PLAN has been designated as Los Angeles County's locally created health care service plan by the Los Angeles County Board of Supervisors. It is a public entity, created pursuant to Welfare and Institutions Code Sections 14087.38(b) and 14087.9605 and Los Angeles County resolution and ordinance. PLAN is licensed by the Department of Managed Health Care as a health care service plan under the California Knox-Keene Act (Health and Safety Code Sections 1340 *et seq.*) (the "Knox-Keene Act"). In the body of the Agreement, PLAN is known as "Local Initiative;" however, for purposes of this amendment only it shall be designated as described above;

WHEREAS, PROVIDER is duly licensed as a prepaid full service health care service plan under the Knox-Keene Act, which arranges for the provision of health care services to enrollees through providers owned and operated by the County of Los Angeles, as well as other entities. In the body of the Agreement, PROVIDER is referred to as "PLAN "; however, for purposes of this amendment only it shall be designated as described above. Depending on context, the word PROVIDER as used in this document may refer to the Community Health Plan, or it may refer to the facilities owned and operated by the County.

WHEREAS, PLAN and PROVIDER desire to amend the Agreement to provide for supplemental payments to PLAN as a result of intergovernmental transfers from the County of Los Angeles to the California Department of Health Care Services ("State DHCS") to maintain the availability of Medi-Cal health care services to Medi-Cal beneficiaries.

NOW, THEREFORE, PLAN and PROVIDER hereby agree as follows:

Exhibit 6 (Compensation) of the Agreement is amended to read as follows:

**THIRD ADDENDUM TO  
EXHIBIT 6**

**MANAGED CARE SUPPLEMENTAL PAYMENT**

**1. Supplemental Payments to PLAN**

**A. Payment**

Should PLAN receive any Medi-Cal managed care capitation rate increases from State DHCS where the non-federal share is funded by the County of Los Angeles specifically pursuant to the provisions of the Intergovernmental Agreement Regarding Transfer of Public Funds ("Intergovernmental Agreement") effective for the period October 1, 2009 through September 30, 2010 (*i.e.*, Special Medi-Cal Managed Care Rate Increase) ("SMCRI"), PLAN shall pay to PROVIDER the amount of the SMCRI received from State DHCS, in accordance with paragraph below (*i.e.*, Local Medi-Cal Managed Care Supplemental Payment) ("LMSP"). LMSPs paid to PROVIDER shall not replace or supplant any other amounts paid or payable to PROVIDER by PLAN.

**B. Health Plan Retention**

**1) Managed Care Organization (MCO) Tax**

PLAN shall be responsible for paying any managed care organization ("MCO") tax due pursuant to Revenue and Taxation Code Section 12201 relating to any SMCRI. If the PLAN receives any capitation rate increases based on the MCO tax attributable to the SMCRI, PLAN may retain an amount equal to the amount of such MCO tax that PLAN is required to pay to the State, and shall pay, as part of the LMSP, the remaining amount of the capitation rate increase to PROVIDER.

**2) PLAN will not retain any other portion of the SMCRI received from the State DHCS other than those mentioned above.**

**C. Schedule and Notice of Transfer of County Funds**

**(1)** Upon receiving notice from State DHCS, the Los Angeles County Department of Health Services ("County DHS") or PROVIDER shall promptly notify PLAN of the date by which the transfer of County funds to State DHCS, referred to in the Intergovernmental Agreement shall occur.

**(2)** County DHS or PROVIDER shall provide PLAN with written notice at least five (5) calendar days prior to transferring County funds to State DHCS for use as the nonfederal share of any SMCRI.



**D. Form and Timing of Payments**

PLAN agrees to pay LMSPs to PROVIDER in the following form and according to the following schedule:

(1) PLAN agrees to pay to PROVIDER LMSPs using the same mechanism through which compensation and payments are normally paid to PROVIDER (e.g., electronic transfer).

(2) PLAN will pay to PROVIDER the LMSPs no later than thirty (30) calendar days after receipt of the SMCRIs from State DHCS.

**E. Consideration**

(1) As consideration for the LMSPs, PROVIDER shall use the LMSPs for the following purposes and shall treat the LMSPs in the following manner:

(a) The LMSPs shall represent compensation for Medi-Cal services rendered to Medi-Cal PLAN members by PROVIDER and shall represent compensation for Medi-Cal services to Medi-Cal PLAN members during the State fiscal year to which the LMSP applies.

(b) To the extent that total payments received by PROVIDER in any State fiscal year under this Agreement exceed the cost of Medi-Cal services provided to Medi-Cal beneficiaries by PROVIDER during that fiscal year, any remaining LMSP amounts shall be retained by PROVIDER to be expended for health care services. Retained LMSP amounts may be used by the PROVIDER in either the State fiscal year received or subsequent State fiscal years.

(2) For purposes of subsection (1) (b) above, if the LMSPs are not used by PROVIDER in the State fiscal year received, retention of funds by PROVIDER will be established by demonstrating that the retained earnings account of PROVIDER at the end of any State fiscal year in which it received payments based on LMSPs funded pursuant to the Intergovernmental Agreement, has increased over the unspent portion of the prior State fiscal year's balance by the amount of LMSPs received, but not used. These retained PROVIDER funds may be commingled with other County funds for cash management purposes provided that such funds are appropriately tracked and only the depositing facility is authorized to expend them.

(3) Both parties agree that none of these funds either County or federal matching funds, will be recycled back to the County general fund, the State or any intermediary organization.

**F. PLAN Oversight Responsibilities**

PLAN's oversight responsibilities regarding PROVIDER's use of the LMSPs shall be limited as described in this Paragraph. PLAN shall request, within thirty (30) calendar

days after each State fiscal year in which LMSPs were transferred to PROVIDER, a written confirmation that states whether and how PROVIDER complied with the provisions set forth in Paragraph E above. In each instance, PROVIDER shall provide PLAN with the written confirmation of compliance within thirty (30) calendar days of PLAN's request.

**G.. Cooperation Among Parties**

Should disputes or disagreements arise regarding the ultimate computation or appropriateness of any aspect of the LMSPs, PROVIDER and PLAN agree to work together in all respects to support and preserve the LMSPs to the full extent possible on behalf of the safety net in Los Angeles County.

**H. Reconciliation**

Within one hundred and twenty (120) calendar days after the end of each of PLAN's fiscal years in which LMSPs were made to PROVIDER, PLAN shall perform a reconciliation of the LMSPs transmitted to the PROVIDER during the preceding year to ensure that the supporting amount of SMCRIs were received by PLAN from State DHCS. PROVIDER agrees to return to PLAN any overpayment of LMSPs made to PROVIDER within thirty (30) calendar days after receipt from PLAN of a written notice of the overpayment, unless PROVIDER submits a written objection to PLAN. Any such objection shall be resolved in accordance with the dispute resolution processes set forth in Section 10.07 of this Agreement. The reconciliation processes established under this paragraph are distinct from the indemnification provisions set forth below. PLAN agrees to transmit to the PROVIDER any underpayment of LMSPs within thirty (30) calendar days of PLAN's identification of such underpayment.

**I.. Indemnification**

(1) Notwithstanding (a) anything to the contrary contained in Sections 6.05(a), 8.02, 10.07 and 10.14 of this Agreement or (b) any other provision of this Amendment, County shall indemnify and hold PLAN harmless against any losses, claims, demands, liabilities, court costs, judgments and expenses, imposed by a court or otherwise incurred by PLAN after the execution date of this Amendment arising from PLAN's receipt of SMCRIs or payment of LMSPs, including but not limited to the following circumstances:

(a) In the event that State DHCS, the Department of Health and Human Services or any other federal or state agency recoups, offsets, or otherwise withholds any monies from or fails to provide any monies to PLAN, or PLAN is denied any monies to which it otherwise would have been entitled, for any reason relating to the Medi-Cal managed care capitation rate increases arising from the Intergovernmental Agreement as such increases flow through the Medi-Cal Agreement between PLAN and the State and this Agreement, including but not limited to (i) State DHCS' use of SMCRIs or LMSPs to supplant or replace any other amounts in violation of the restrictions in Section 2.2 of the Intergovernmental Agreement; (ii) the failure of the SMCRIs to qualify in whole or part for federal participation pursuant to 42 C.F.R. part 433, subpart B; (iii) overpayment of SMCRIs to PLAN by State DHCS or (iv) PLAN experiencing an uncompensated expense arising from the application of any MCO tax pursuant

## Exhibit III

to California Revenue and Taxation Code Section 12201 to SMCRI, PLAN shall have a right to immediately recoup, offset or withhold any and all such amounts from payments otherwise due to PROVIDER and/or County. Recovery by PLAN pursuant to this section shall include, but not be limited to, reduction in future LMSPs paid to PROVIDER in an amount equal to the amount of SMCRI payments recovered from PLAN, or by reduction of any other amounts owed by PLAN to PROVIDER or County, including reduction of Capitation Payments owed by PLAN to PROVIDER pursuant to this Agreement or a reduction of other payments by PLAN to County pursuant to any other agreement then existing between the parties;

(b) PLAN shall pursue an appeal, a lawsuit, or any other available legal action to challenge any recoupment by State DHCS, the Department of Health and Human Services, or any other federal or state agency that is not required by law, unless after consultation with County DHS and with good cause, PLAN determines that it is not in the best interest of PLAN and/or County DHS to do so;

(c) At PLAN's discretion, County DHS shall either provide or arrange for legal representation on PLAN's behalf or PLAN shall arrange for its own representation and be entitled to reasonable attorney's fees and costs from County for such representation, in addition to any and all other relief to which PLAN may be entitled, including, but not limited to, the following circumstances:

(i) If any action at law, suit in equity, arbitration, or administrative action is brought against PLAN by State DHCS, the Department of Health and Human Services, any other federal or state agency or other individual or organization to: (i) enforce or interpret the SMCRI or LMSPs; or (ii) recoup, offset, or otherwise withhold any monies from PLAN relating to the SMCRI or LMSPs; or

(ii) If PLAN brings any appeal, action at law, suit in equity, arbitration or administrative action against the State DHCS, the Department of Health and Human Services or any other federal or state agency to (i) enforce or interpret the SMCRI or LMSPs; or (ii) in response to an action described in subparagraph (a) or subparagraph (c)(i) above;

(d) If PLAN prevails in any appeal, action at law, suit in equity, arbitration, or administrative action against PROVIDER and/or County to enforce or interpret the SMCRI or LMSPs or to recoup, offset, or otherwise withhold any monies relating to the SMCRI or LMSPs, PLAN shall be entitled to reasonable attorney's fees and costs from PROVIDER and/or County; and

(2) In the event that PLAN believes that it is or was subject to any losses, claims, demands, liabilities, court costs, judgments or obligations to third parties which arose due to this amendment as a result of the parties' process toward or intention to enter into this Amendment or as a result of the terms of this Amendment, PLAN shall promptly notify PROVIDER and County DHS of such belief. The parties will then negotiate, in good faith, the extent to which County will provide indemnification. It is the parties' intention that PLAN not be substantially economically harmed as a result of its willingness to enter into this Amendment.

## Exhibit III

This Subparagraph I of Paragraph 1 (as well as subparagraphs F, G, and H, and paragraph 2) shall survive the termination of either this Amendment or the Agreement.

### 2. Term

The term of this Amendment shall commence on October 1, 2009 and shall terminate on \_\_\_\_\_.

All other terms and provisions of said Agreement shall remain in full force and effect so that all rights, duties and obligations, and liabilities of the parties hereto otherwise remain unchanged; provide, however, if there is any conflict between the terms of this Amendment and the Agreement, then the terms of this Amendment shall govern.

### **COUNTY OF LOS ANGELES**

By: \_\_\_\_\_  
Its: MITCHELL H. KATZ, M.D.  
Director, Department of Health Services

Date: \_\_\_\_\_

### **LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY d.b.a. L.A. CARE HEALTH PLAN (L.A. CARE)**

By: \_\_\_\_\_  
Its: HOWARD A. KAHN  
Chief Executive Officer

Date: \_\_\_\_\_

CAPITATION AGREEMENT FOR PROVISION OF HEALTH CARE SERVICES BY  
COUNTY

AMENDMENT NO. X

THIS Agreement is made this \_\_\_\_ day of \_\_\_\_, 2011,

by and between

HEALTH NET OF CALIFORNIA, INC.  
herein after referred to as "PLAN,"

and

COUNTY OF LOS ANGELES, through its LOS  
ANGELES COUNTY DEPARTMENT OF  
HEALTH CARE SERVICES, hereinafter  
referred to as "PROVIDER"

WHEREAS, PLAN and PROVIDER have previously entered into an Agreement  
effective February 16, 1999,

WHEREAS, Section 37 of such Agreement provides for amending such Agreement;

WHEREAS, the Agreement referenced above, and any amendments to it are known  
among the parties as Capitation Agreement for Provision of Health Care Services and is further  
identified as Agreement No. H. 210040. Although in that Agreement, Health Net is referred to  
as "Contractor" , for purposes of this Amendment, the parties shall be referred to by the  
designations listed above.

WHEREAS, PROVIDER, which includes a network of acute care hospitals and free  
standing clinics, has been experiencing economic losses in connection with making essential  
services available to the public, including PLAN Medi-Cal Enrollees and requires additional  
revenue in order to assure their continuing availability. Although, in agreement No. H 210040,  
the County was referred to as "County", for purposes of this Amendment, the parties shall be  
referred to by the designation listed above. Where appropriate given the context and in  
paragraph F below, PROVIDER may refer to individual health facilities owned and operated by  
the County of Los Angeles;

WHEREAS, PLAN and PROVIDER desire to amend the Agreement to provide for  
supplemental payments to PLAN as a result of intergovernmental transfers made by the County  
of Los Angeles to the California Department of Health Care Services ("State DHCS") to  
maintain the availability of Medi-Cal health care services to Medi-Cal beneficiaries;

NOW, THEREFORE, PLAN and PROVIDER hereby agree as follows:

1. The following Paragraph 41 MANAGED CARE SUPPLEMENTAL PAYMENT shall be  
added:

41. **MANAGED CARE SUPPLEMENTAL PAYMENT**

**1. Supplemental Payments to Health Net**

**A. Payment**

Should PLAN receive any Medi-Cal managed care capitation rate increases from State DHCS where the nonfederal share is funded by the County of Los Angeles specifically pursuant to the provisions of the Intergovernmental Agreement Regarding Transfer of Public Funds (“Intergovernmental Agreement”) effective for the period October 1, 2009 through September 30, 2010 (*i.e.*, Special Medi-Cal Managed Care Rate Increases) (“SMCRI”), PLAN shall, pay to PROVIDER the amount of the SMCRI received from State DHCS, in accordance with paragraph below (*i.e.*, Local Medi-Cal Managed Care Supplemental Payments) (“LMSP”). LMSPs paid to PROVIDER shall not replace or supplant any other amounts paid or payable to PROVIDER by PLAN.

**B. Health Plan Retention**

**1) Managed Care Organizations (MCO) Tax**

The PLAN shall be responsible for any managed care organization (“MCO”) tax due pursuant to Revenue and Taxation Code Section 12201 relating to any SMCRI. If the PLAN receives any capitation rate increases based on the MCO tax attributable to the SMCRI, PLAN may retain an amount equal to the amount of such MCO tax that PLAN is required to pay to the State, and shall pay, as part of the LMSP, the remaining amount of the capitation rate increase to PROVIDER.

**2) Administrative Fee**

PLAN may retain \$100,000 of the SMCRI as an administrative fee for the services it renders in connection with this Paragraph 41.

**3)** PLAN will not retain any other portion of the SMCRI received from State DHCS other than those mentioned above.

**C. Conditions for Receiving Supplemental Payments**

1. In addition to all other obligations imposed on PROVIDER by the Agreement, PROVIDER agrees that it will not exercise any discretion it has to terminate, and will maintain and make available to PLAN Medi-Cal Enrollees for the period October 1, 2010 through September 30, 2011 the following:

- Level 1 Trauma Centers at LAC+USC Medical Center and Harbor/UCLA Medical Center;
- a basic emergency room at Olive View Medical Center;
- a burn unit at LAC+USC Medical Center;
- a hyperbaric oxygen therapy chamber located on Catalina Island.

2. PROVIDER will apply Inpatient Clinical Pathways as structured care tools for PLAN Medi-Cal Enrollees, as appropriate, for hospital admissions for the following conditions:

Community Acquired Pneumonia  
Congestive Heart Failure  
Uncomplicated Cellulitis  
Appendectomy with Rupture  
Appendectomy without Rupture  
Laparoscopic Appendectomy without Rupture  
Laparoscopic Cholecystectomy  
Elective Colon Resection without Ostomy

**D. Schedule and Notice of Transfer of County Funds**

(1) The Los Angeles County Department of Health Services (“County DHS”) shall, to the extent feasible, provide PLAN with a copy of the schedule regarding the transfer of County funds to State DHCS, referred to in the Intergovernmental Agreement, within 15 days of establishing such schedule with the State DHCS. Additionally, County DHS shall notify PLAN, in writing, no less than seven (7) calendar days prior to any changes to an existing schedule including, but not limited to, changes in the amounts specified therein.

(2) County DHS shall provide PLAN with written notice of the amount and date of the transfer within (7) days after transferring County funds to State DHCS for use as the nonfederal share of any SMCRI.

**E. Form and Timing of Payments**

PLAN agrees to pay LMSPs to PROVIDER in the following form and according to the following schedule:

(1) PLAN agrees to pay to PROVIDER LMSPs using the same mechanism though which compensation and payments are normally paid to PROVIDER (e.g., electronic transfer)

(2) PLAN will pay to PROVIDER the LMSPs no later than thirty (30) calendar days after receipt of the SMCRI from State DHCS.

**F. Consideration**

1. As consideration for the LMSPs, PROVIDER shall use the LMSPs for the following purposes and shall treat the LMSPs in the following manner:

(a) The LMSPs shall represent compensation for Medi-Cal services rendered to Medi-Cal PLAN members by PROVIDER and shall represent compensation for Medi-Cal services to Medi-Cal PLAN members during the State fiscal year to which the LMSP applies.

(b) To the extent that total payments received by PROVIDER in any State fiscal year under this Agreement exceed the cost of Medi-Cal services provided to Medi-Cal beneficiaries by PROVIDER during that fiscal year, any remaining LMSP amounts shall be retained by PROVIDER to be expended for health care services. Retained LMSP amounts may be used by the PROVIDER in either the State fiscal year received or subsequent State fiscal years.

2. For purposes of subsection (1) (b) above, if the LMSPs are not used by PROVIDER in the State fiscal year received, retention of funds by PROVIDER will be established by demonstrating that the retained earnings account of PROVIDER at the end of any State fiscal year in which it received payments based on LMSPs funded pursuant to the Intergovernmental Agreement, has increased over the unspent portion of the prior State fiscal year's balance by the amount of LMSPs received, but not used. These retained PROVIDER funds may be commingled with other County funds for cash management purposes provided that such funds are appropriately tracked and only the depositing facility is authorized to expend them.

3. Both parties agree that none of these funds, either County or federal matching funds, will be recycled back to the County general fund, the State or any other intermediary organization.

**G. PLAN's Oversight Responsibilities**

PLAN's oversight responsibilities regarding PROVIDER's use of the LMSPs shall be limited as described in this Paragraph. PLAN shall request, within thirty (30) calendar days after each State fiscal year in which LMSPs were transferred to PROVIDER, a written confirmation that states whether and how PROVIDER complied with the provisions set forth in Paragraph F above. In each instance, PROVIDER shall provide PLAN with written confirmation of compliance within thirty (30) calendar days of PLAN's request.

**H. Cooperation Among Parties**

Should disputes or disagreements arise regarding the ultimate computation or appropriateness of any aspect of the LMSPs, PROVIDER and PLAN agree to work together in all respects to support and preserve the LMSPs to the full extent possible on behalf of the safety net in Los Angeles County.

**I. Reconciliation**

Within one hundred and twenty (120) calendar days after the end of each of PLAN's fiscal years in which LMSPs were made to PROVIDER, PLAN shall perform a reconciliation of the LMSPs transmitted to the PROVIDER during the preceding year to ensure that the supporting amount of SMCRI's were received by PLAN from State DHCS. PROVIDER agrees to return to PLAN any overpayment of LMSPs made to PROVIDER within thirty (30) calendar days after receipt from PLAN of a written notice of the overpayment, unless PROVIDER submits a written objection to PLAN. Any such objection shall be resolved in



accordance with the dispute resolution processes set forth in Paragraph 21 of this Agreement. The reconciliation processes established under this paragraph are distinct from the indemnification provisions set forth below. PLAN agrees to transmit to the PROVIDER any underpayment of LMSPs within thirty (30) calendar days of PLAN's identification of such underpayment.

**J. Indemnification**

1. Anything to the contrary contained in Paragraph 18 of this Agreement notwithstanding, PROVIDER shall indemnify and hold PLAN harmless against any losses, claims, demands, liabilities, court costs, judgments and expenses, imposed by a court or otherwise incurred by PLAN after the execution date of this Amendment as a result of PLAN's receipt of SMCRI or payment of LMSPs, including but not limited to the following circumstances:

2. In the event that State DHCS, the Department of Health and Human Services or any other federal or state agency recoups, offsets, or otherwise withholds any monies from or fails to provide any monies to PLAN, or PLAN is denied any monies to which it otherwise would have been entitled, for any reason relating to the Medi-Cal managed care capitation rate increases arising from the Intergovernmental Agreement as such increases flow through the Medi-Cal Agreement between PLAN and the State and this Agreement, including but not limited to (a) State DHCS' use of SMCRI or LMSPs to supplant or replace other amount in violation of the restrictions in Section 2.2 of the Intergovernmental Agreement; (b) the failure of the SMCRI to qualify in whole or part for federal participation pursuant to 42 C.F.R. part 433, subpart B; or (c) overpayment of SMCRI to PLAN by State DHCS, PLAN shall have a right to immediately recoup, offset or withhold any and all such amounts from payments otherwise due to PROVIDER. Recovery by PLAN pursuant to this section shall include, but not be limited to, reduction in future LMSPs paid to PROVIDER in an amount equal to the amount of SMCRI payments recovered from PLAN, or by reduction of any other amounts owed by PLAN to PROVIDER;

3. PLAN shall pursue an appeal, a lawsuit, or any other available legal action to challenge any recoupment by State DHCS, the Department of Health and Human Services, or any other federal or state agency, that is not required by law, unless after consultation with PROVIDER and with good cause, PLAN determines that it is not in the best interest of PLAN and/or PROVIDER to do so;

4. At PLAN's discretion, PROVIDER shall either provide or arrange for legal representation on PLAN's behalf or PLAN shall arrange for its own representation and be entitled to reasonable attorney's fees and costs from PROVIDER for such representation, in addition to any and all other relief to which PLAN may be entitled, including, but not limited to, the following circumstances:

(a) If any action at law, suit in equity, arbitration, or administrative action is brought against PLAN by State DHCS, the Department of Health and Human Services, any other federal or state agency or other individual or organization to: (i)

enforce or interpret the SMCRIs or LMSPs; or (ii) recoup, offset, or otherwise withhold any monies from PLAN relating to the SMCRIs or LMSPs; or

(b) If PLAN brings any appeal, action at law, suit in equity, arbitration or administrative action against the State DHCS, the Department of Health and Human Services or any other federal or state agency to (i) enforce or interpret the SMCRIs or LMSPs; or (ii) in response to an action described in subparagraph 1 or subparagraph 4(a) above:

5. If PLAN prevails in any appeal, action at law, suit in equity, arbitration, or administrative action against PROVIDER to enforce or interpret the SMCRIs or LMSPs or to recoup, offset, or otherwise withhold any monies relating to the SMCRIs or LMSPs, PLAN shall be entitled to reasonable attorney's fees and costs from PROVIDER; and

6. In the event that PLAN believes that it is subject to any losses, claims, demands, liabilities, court costs, judgments or obligations to third parties which arise before the execution of this Amendment as a direct result of the parties' intention to enter into this Amendment or the terms of this Amendment, PLAN shall promptly notify PROVIDER of such belief. The parties will then negotiate, in good faith, the extent to which PROVIDER will provide indemnification. It is the parties' intention that PLAN not be substantially economically harmed as a result of its willingness to enter into this Amendment.

## 2. Term

The term of this Amendment shall commence on October 1, 2009 and shall terminate on.

All other terms and provisions of said Agreement shall remain in full force and effect so that all rights, duties and obligations, and liabilities of the parties hereto otherwise remain unchanged; provided, however, if there is any conflict between the terms of this Amendment and the Agreement, then the terms of this Amendment shall govern.

### SIGNATURES

Health Net of California Inc.

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By: David M Meadows  
Vice President, State Health Programs

County of Los Angeles

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Mitchell H. Katz, M.D.  
Director, Department of Health Services